

Falls Church, Virginia 20530

File: D2014-076

Date:

~~JUL 23 2014~~

In re: DAVID W. IVERSON, ATTORNEY

IN PRACTITIONER DISCIPLINARY PROCEEDINGS

FINAL ORDER OF DISCIPLINE

ON BEHALF OF DHS: Catherine M. O'Connell, Disciplinary Counsel

ON BEHALF OF EOIR: Jennifer J. Barnes, Disciplinary Counsel

ON BEHALF OF RESPONDENT: Pro se

The respondent will be suspended from practice before the Board, Immigration Courts, and Department of Homeland Security (the "DHS"), for six months.

On February 12, 2014, the respondent was suspended for six months from the practice of law in the Virgin Islands, by the Supreme Court of the Virgin Islands. The disciplinary proceedings were instituted on November 21, 2013, for non-payment of membership dues. In its February 12, 2014, decision, the court set out how, on November 26, 2013, it ordered the respondent to provide a written answer to the Virgin Islands' Bar Association suspension motion, no later than December 30, 2013.

The Supreme Court of the Virgin Islands' February 12, 2014, order further described how the respondent submitted an untimely response on January 8, 2014, in which he complained that the Virgin Islands' Bar Association had used an incorrect address for years. According to the respondent, the Virgin Islands' Bar Association had incorrectly reported that the respondent had been suspended from practice, and this had caused the Executive Office for Immigration Review (EOIR) to say that the respondent could not practice before it.

The Supreme Court of the Virgin Islands' February 12, 2014, order then stated that, in investigating the respondent's claims, it discovered that in 2012 the respondent had been suspended from the practice of law by the Supreme Court of Florida and this Board, but he did not disclose either suspension to the Supreme Court of the Virgin Islands. The Supreme Court of the Virgin Islands' February 12, 2014, order then described how it issued a January 9, 2014, order, which took judicial notice of the suspension orders of the Supreme Court of Florida, and this Board. The respondent was ordered to respond, by February 10, 2014, as to whether he should face reciprocal discipline, and whether additional sanctions should be ordered for his failure to notify the Supreme Court of the Virgin Islands concerning the suspension orders. The respondent on January 29, 2014, sent a letter to the Clerk of the Supreme Court of the Virgin Islands, in which he paid fees "under protest", but did not address the reciprocal discipline issue.

As discussed, on February 12, 2014, the respondent was suspended for six months from the practice of law in the Virgin Islands, by the Supreme Court of the Virgin Islands. The court noted that the respondent failed to promptly notify it of the suspension orders by this Board, and the Supreme Court of Florida, dishonestly attributed his suspension by the Board to a defect in the Virgin Islands Bar Association's membership directory, and did not address the concerns of the Supreme Court of the Virgin Islands, after the court issued its January 9, 2014, order.

On March 13, 2014, the DHS initiated disciplinary proceedings against the respondent, based on the Supreme Court of the Virgin Islands' suspension order, and petitioned for the respondent's immediate suspension from practice before the DHS. The Disciplinary Counsel for EOIR then asked that the respondent be similarly suspended from practice before EOIR, including the Board and Immigration Courts. Therefore, on March 26, 2014, we suspended the respondent from practicing before the Board, the Immigration Courts, and the DHS pending final disposition of this proceeding. We declined to set aside this order on May 27, 2014. The respondent filed an answer to the Notice of Intent to Discipline, as well as a "Motion To Reconsider Denial of Motion To Set Aside Immediate Suspension"; both of these filings have been considered. The DHS thereafter submitted a "Motion for Summary Adjudication."

Where a respondent is subject to summary disciplinary proceedings based on having been suspended from the practice of law, the attorney "must make a prima facie showing to the Board in his or her answer that there is a material issue of fact in dispute with regard to the basis for summary disciplinary proceedings, or with one or more of the exceptions set forth in 8 C.F.R. § 1003.103(b)(2)(i) through (iii)." See 8 C.F.R. §§ 1003.106(a)(2013), 292.3(c)(3). Where no such showing is made, we are to retain jurisdiction over the case, and issue a final order. *Id.*; DHS "Motion for Summary Adjudication", at ¶ 12; *Matter of Salomon*, 25 I&N Dec. 559, 560 (BIA 2011). We agree with the DHS Disciplinary Counsel that there are no material issues of fact at issue. DHS "Motion for Summary Adjudication", at ¶ 13. The respondent raises legal issues that may be addressed by the Board. We find it appropriate to issue a final order on the DHS' charges.

As to the "exceptions" set forth in 8 C.F.R. § 1003.103(b)(2)(i)-(iii) (2013), this provides that a final order of suspension creates a rebuttable presumption that disciplinary sanctions should follow, and such a presumption can be rebutted only upon a showing, by "clear and convincing evidence", that the underlying disciplinary proceeding resulted in a deprivation of due process, that there was an infirmity of proof establishing the misconduct, or that discipline would result in grave injustice. *Matter of Kronegold*, 25 I&N Dec. 157, 160-61 (BIA 2010). The respondent has not rebutted this presumption. The respondent has not provided "clear and convincing evidence" that the underlying disciplinary proceeding in the Virgin Islands violated his due process rights.

As we took into account in our May 27, 2014, order, the respondent was aware of orders of the Supreme Court of the Virgin Islands that he respond concerning the disciplinary matter in that jurisdiction, and filings that he made with that court were taken into account prior to his February 12, 2014, suspension by the Supreme Court of the Virgin Islands. Concerning the Supreme Court of the Virgin Islands' January 9, 2014, order, that court in denying rehearing on April 16, 2014, found that the circumstances indicated that the respondent received that order, and, even if it was assumed that the respondent did not receive the court's January 9, 2014, order, "... the record contains absolutely no indication that [the respondent] did not receive this Court's

January 29, 2014, Order rejecting his January 29, 2014, correspondence, which re-iterated the contents of the January 9, 2014, Order and advised Iverson that the February 10, 2014, deadline remained in effect." Moreover, the Supreme Court of the Virgin Islands stated in denying rehearing, in a March 13, 2014, filing, the respondent conceded that he failed to notify that court of suspensions by the Supreme Court of Florida, and this Board. Therefore, there was no purpose in reopening the disciplinary matter, the Supreme Court of the Virgin Islands found on April 16, 2014, "... in that this Court suspended Iverson from the practice of law for six months precisely because he failed to notify this Court of those prior suspensions in a timely manner."

The respondent also contends that it would amount to a "grave injustice" to suspend him for six months. That is, according to the respondent, although he did not notify the Supreme Court of the Virgin Islands concerning prior suspension orders, he is an inactive attorney in the Virgin Islands. He also asserts that he faces hardships, such as health issues and other "personal problems." The respondent does not thereby show that imposing identical reciprocal discipline would result in "grave injustice." 8 C.F.R. §§ 1003.103(b)(2)(iii).

We also again note that only attorneys and certain non-attorneys may represent individuals before the DHS, and "no other person or persons shall represent others in any case." 8 C.F.R. § 292.1(a)(1), (e); *see also* 8 C.F.R. §§ 1292.1(a), (e) (regarding representation of individuals before EOIR). An "attorney" who may represent individuals is defined at 8 C.F.R. § 1.2. *See* 8 C.F.R. § 292.1(a). The regulation states that:

The term attorney means any person who is eligible to practice law in, and is a member in good standing of the bar of, the highest court of any State, possession, territory, or Commonwealth of the United States, or of the District of Columbia, and is not under any order suspending, enjoining, restraining, disbaring, or otherwise restricting him or her in the practice of law.

8 C.F.R. § 1.2. The respondent does not show that he meets this regulatory definition, as the DHS has presented evidence that he is restricted in the practice of law in the Virgin Islands. "Motion for Summary Adjudication", at ¶¶9-10.

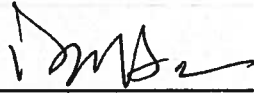
The Notice of Intent to Discipline proposes that the respondent be suspended from practice before the DHS for six months. The Disciplinary Counsel for EOIR has asked that the respondent be similarly suspended from practice before EOIR, including the Board and Immigration Courts. The proposal is appropriate, and we will honor it. As the respondent is currently under our March 26, 2014, order of suspension, we will deem his suspension to have commenced on that date.

**ORDER:** The Board hereby suspends the respondent from practice before the Board, the Immigration Courts, and the DHS, for six months.

**FURTHER ORDER:** The respondent is instructed to maintain compliance with the directives set forth in our prior order. The respondent is also instructed to notify the Board of any further disciplinary action against him.

FURTHER ORDER: The respondent may petition this Board for reinstatement to practice before the Board, Immigration Courts, and DHS under 8 C.F.R. § 1003.107(2013).

FURTHER ORDER: As the Board earlier imposed an immediate suspension order in this case, today's order of the Board becomes effective immediately. 8 C.F.R. § 1003.105(d)(2)(2013).

A handwritten signature in black ink, appearing to be 'JMS', is written above a horizontal line.

FOR THE BOARD